

**Notice of Allowability****Application No.**

09/653,924

**Examiner**

Maher M. Haddad

**Applicant(s)**

HORWITZ, DAVID A.

**Art Unit**

1644

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 09/08/03.
2. ☒ The allowed claim(s) is/are 2,5-8,10,14-17,31-36,41 and 42.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                      |                                                                                           |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Notice of References Cited (PTO-892)                                        | <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                  |
| <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>10/8/03</u> |
| <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | <input checked="" type="checkbox"/> Examiner's Amendment/Comment                          |
| <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                    |
|                                                                                                      | <input type="checkbox"/> Other                                                            |

### **DETAILED ACTION**

1. Applicant's amendment, filed 09/8/03, is acknowledged.
2. In view of the Terminal Disclaimer filed 09/08/03, the previous obviousness-type double patenting rejections mailed 5/6/03 and 10/2/02 are hereby withdrawn.
3. Upon further reconsideration, the species of claims 5, 7-8, 14, 1-17, and 34-36 are hereby rejoined.

### **EXAMINER'S AMENDMENT**

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.
2. Authorization for this Examiner's Amendment was given in a telephone interview with Renee Kossiak on 10/8/03.

#### In the Claims:

3. Claims 29-30 have been canceled.
4. In claim 2, line 6, the word "patient" has been replaced with -- treated PBMC--.
5. In claims 5 and 14, lines 1-2 and line 2, respectively, the phrase "a recipient cell" has been replaced with -- an irradiated recipient PBMC --.
6. In claim 6, line 1, the word "cells" has been replaced with -- treated PBMC --.
7. In claims 31 and 41, line 7, the word "patient" has been replaced with -- treated CD3+CD4-CD8- cells --.
8. In claim 33, line 2, the term "anti-CD3" has been replaced with -- an anti-CD3 antibody --.
9. In claim 34, line 2, the term "anti-CD28" has been replaced with -- an anti-CD28 antibody --.
10. In claim 35, line 2, the term "anti-CD2" has been replaced with --an anti-CD2 antibody --.
11. In claim 33-36, line 1, the word "and" has been replaced with -- or --.

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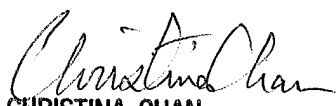
12. In claims 41 and 42, line 6, the word -- antibody -- has been inserted after "anti-CD3".

13. Claims 2, 5-8, 10, 14-17, 31-36 and 41-42 are pending and are allowed.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maher Haddad, whose telephone number is (703) 306-3472. The examiner can normally be reached Monday to Friday from 8:00 to 4:30. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached at (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Maher Haddad, Ph.D.  
Patent Examiner  
Technology Center 1600  
October 14, 2003

  
CHRISTINA CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600